

July 30, 2004

By ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: In the Matter of Petition for Rulemaking or, Alternatively, a Waiver of the Eligibility Restrictions on C Block Licenses in the Broadband Personal Communications Services, RM-11019

Dear Ms. Dortch:

Reference is made to our letter dated July 8, 2004 relating to FCC Auction No. 58, a copy of which is attached. Vincent D. McBride and Scott D. Reiter strongly disagree with CTIA's request that the Commission initiate a rulemaking, or otherwise waive its rules, to eliminate the offering of Closed licenses in Auction No. 58. As set forth below, we believe more firmly than ever that the Commission's inclusion of Closed licenses is absolutely critical to the success of Designated Entities ("DEs") in Auction No. 58.

The Commission must continue to enforce its current rules, which were developed prior to Auction No. 35 and which provide a meaningful opportunity for small businesses to gain entry into the wireless communications marketplace in fulfillment of Congress's mandate. In fact, the Commission long ago recognized that the "critical combination" of set-asides and bidding credits provide a true opportunity for DEs to acquire broadband PCS spectrum. If Auction No. 58 were to proceed without the set-asides, DE bidders would have a minimal – if any – opportunity to acquire these licenses when competing against major carriers with deep pockets. Particularly given the rapid and ongoing consolidation in the wireless industry, the Commission must ensure that a diverse set of smaller carriers have a realistic chance to quickly deploy the broadband services demanded by today's wireless consumers.

For these reasons, Vincent D. McBride and Scott D. Reiter urge the Commission to promptly deny the CTIA Petition.

Respectfully submitted,

/s/ Vincent D. McBride
Vincent D. McBride

/s/ Scott D. Reiter
Scott D. Reiter

Attachment

July 8, 2004

Via Electronic Mail

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: Report No. AUC-04-58-B (Auction No. 58)

Dear Ms. Dortch:

Vincent D. McBride and Scott D. Reiter wishes to commend the Commission for enforcing the designated entity (DE) rules and policies, developed in connection with Auction No. 35, for the forthcoming Broadband PCS Spectrum Auction No. 58. (Broadband PCS Spectrum Auction Scheduled for January 12, 2005, Public Notice DA 04-1639 (dated June 18, 2004) ("Public Notice").) As true small business bidders that won licenses in Auction No. 35, we look forward to an equitable playing field in Auction No. 58, with the hope and expectation that the upcoming auction will provide us with a meaningful opportunity to acquire additional spectrum and to continue developing innovative services for the benefit of American wireless consumers.

With this in mind, we therefore urge the Commission to continue to hold firm against pressure from the nationwide carriers and their trade association, who will likely use the Public Notice as a means to attempt to further erode the DE program. In fact, the current auction structure as announced by the Commission already reflects a significant erosion of the DE opportunity as a result of intensive lobbying from the national carriers four years ago. At that time the Commission developed the current rules pursuant to a lengthy notice and comment period where the interests of the parties were fully heard and weighed at the time. The Commission is therefore precisely correct in adhering to that fully-considered consensus plan.

As supported by the Commission in 2000 and enforced again today, the Auction No. 58 rules provide a true opportunity for DEs to acquire PCS spectrum through the critical combination of set-asides and bid credits. As we clearly saw in Auction No. 35, the underlying success of that auction cannot be disputed. In fact, the 32 DEs that participated in Auction No. 35 won 45 percent of all licenses by value. This statistic demonstrates that small businesses are eager for spectrum ownership opportunities and are well-positioned to pursue them thanks to the current rules.

Although the well-financed nationwide carriers have mounted an aggressive lobbying campaign against the DE set-asides in this auction, the Commission must continue to

Ms. Marlene H. Dortch

July 8, 2004

Page 2

vigilantly protect its record of enhancing diversity and promoting small business presence in the wireless communications industry. Any further diminishment of the DE rules, even if seemingly minor, will preclude us and other similarly-situated companies from meaningful participation in the wireless industry going forward, tilting the playing field wholly in favor of the national carriers.

In fact, for this reason we oppose the significantly higher minimum opening bids established for this auction, as compared to Auction No. 35, as set forth in the Public Notice. The minimum opening bids must be re-set back to the established minimum opening bids set in Auction No. 35 in favor of the true small Business.

Finally, any consideration of modifying the auction structure at this late date in a direction that would diminish DE opportunities would delay the January, 2005 start of Auction No. 58, and would likely expose the auction to regulatory uncertainty and litigation, circumstances that would further hinder the path toward build-out and deployment of new services.

For these reasons, we commend the Commission for enforcing the current auction rules, giving companies like ours the opportunity to participate in Auction No. 58 and the opportunity to offer new and innovative wireless services in competition with larger carriers.

Sincerely,

Vincent D. McBride

Scott D. Reiter